

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MANUEL A. WAGAN,

No. C 08-1082 WHA (PR)

Petitioner,

**ORDER DENYING MOTIONS FOR
COUNSEL AND TO PROCEED IFP
ON APPEAL**

v.

SAN MATEO COUNTY SUPERIOR
COURT,

Respondent.

Petitioner moved to voluntarily dismiss this mandamus action. The motion was granted and judgment was entered. Petitioner's motion to reconsider the entry of judgment, contending that because mandamus actions have been abolished in the federal district courts the Court lacked jurisdiction and should not have entered judgment, was denied. Petitioner now has filed a notice of appeal, moved for appointment of counsel, and moved for leave to proceed in forma pauperis on appeal.

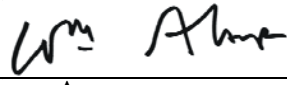
The motion for counsel (document number 12 on the docket) is **DENIED** without prejudice to renewing it in the court of appeals.

Section 1915(a)(3) of Title 28 of the United States Code provides that an appeal may not be taken in forma pauperis ("IFP") if the trial court certifies it is not taken in good faith. "Not taken in good faith" means "frivolous." *Ellis v. United States*, 356 U.S. 674, 674-75 (1958); *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (order) (equating "not taken

1 in good faith” with “frivolous”). An appeal here would be frivolous for the reasons set out in
2 the denial of the motion to reconsider. The motion to proceed IFP on appeal (document 17)
3 therefore is **DENIED**. The clerk shall send a copy of this order to the United States Court of
4 Appeals for the Ninth Circuit. *See* Fed. R.App.P. 24(a)(4).

5 **IT IS SO ORDERED.**

6 Dated: April 20, 2009.

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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE